

**ENTERED**

May 06, 2020

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

MARY GOODEN,

Plaintiff,

VS.

L. KELLER MACKIE, *et al.*,

Defendants,

§  
§  
§  
§  
§  
§  
§  
§

CIVIL ACTION NO. H-19-2948

**ORDER ADOPTING MEMORANDUM AND RECOMMENDATION**

This court has reviewed the Memorandum and Recommendation of Judge Christina Bryan signed on April 21, 2020 and made a *de novo* determination. FED. R. CIV. P. 72(b); 28 U.S.C. § 636(b)(1)(C); *United States v. Wilson*, 864 F.2d 1219 (5th Cir. 1989). Based on the pleadings, the parties' briefs, and the applicable law, the court adopts the Memorandum and Recommendation as this court's Memorandum and Order. This court finds and concludes that: (1) the Mackie Defendants' motion to strike was properly granted; (2) the Mackie Defendants' motion to dismiss was properly denied as moot; (3) O'Brien, SPS, and U.S. Bank's motion to dismiss was properly granted; and (4) the complaint is properly dismissed without leave to amend because further amendment would be futile. Judge Bryan's recommendation to strike the amended claims against the defendants who were improperly joined is consistent with and supported by the applicable legal standards, the allegations in the complaint, and this court's prior order, (Docket Entry No. 25). Judge Bryan's recommendation to dismiss the amended fraud claim against SPS, U.S. Bank, and O'Brien, is also consistent with and supported by the applicable legal standards and the allegations in the complaint. Mackie's amended fraud claim fails to meet Rule 9(b)'s heightened pleading standard. FED. R. CIV. P. 9(b). Mackie has proven

unable to amend to cure the pleading deficiencies, making it appropriate to dismiss her claims with prejudice and without leave to amend. SPS, U.S. Bank, and O'Brien's motion to dismiss, (Docket Entry No. 27), is granted. The Mackie Defendants' motion to strike, (Docket Entry No. 26), is granted. The Mackie Defendants' motion to dismiss, (Docket Entry No. 26), is denied as moot. Final judgment dismissing this case with prejudice is entered by separate order.

SIGNED on May 6, 2020, at Houston, Texas.

A handwritten signature in black ink, reading "Lee H. Rosenthal", written over a horizontal line.

Lee H. Rosenthal  
Chief United States District Judge